Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

REPLY COMMENTS OF
THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE

The Ad Hoc Telecommunications Users Committee ("Ad Hoc") hereby submits its reply comments in response to the comments issued pursuant to the Public Notice released on June 29, 2017 (DA 17-631). For the reasons set forth below, the Commission should reject comments that argue in favor of the differentiation between originating 8YY access and terminating access. The two are economically equivalent and should be treated the same.

I. THE COMMISSION SHOULD NOT DELAY FURTHER IN TREATING 8YY ORIGINATING ACCESS THE SAME AS TERMINATING ACCESS, AND ARGUMENTS TO THE CONTRARY ARE FACTUALLY UNSUPPORTED AND ECONOMICALLY UNSOUND.

The Commission recognized in its 2011 Further Notice of Proposed Rulemaking ("*FNPRM*") in this proceeding that treating 8YY originating access differently from terminating access would lead to market distortions. Like terminating access for "sent paid" calls (but unlike originating access for non-8YY calls), the party choosing the LEC providing such access does *not* pay the charge for the interexchange call using such access and so does not bear the cost of such access. Thus, the party has no incentive to choose the low-cost carrier and so there is no competitive pressure on the access charge.[1] Historically, for some 25 years leading up to the Report and Order issued along with the *FNPRM*, the Commission had therefore treated originating 8YY access identically with terminating access for "sent paid" calls.[2] The *FNPRM* asked whether the Commission should restore that treatment, and the recent Public Notice in this proceeding asks interested parties to refresh the record and supply updated data on this question. Ad Hoc has consistently supported treating the two the same and does so again here: for 8YY originating access, the Commission should adopt the same transition to bill-and-keep that it has for terminating access.

AT&T, Verizon, Sprint and GCI all strongly support Ad Hoc's position. In addition to seconding the Commission's (and Ad Hoc's) economic analysis, AT&T and Verizon supply evidence of uneconomic arbitraging made possible by

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1 *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (paras. 1-1011 and 1404-end thereof, the "*2011 Transformation Order*" and paras. 1012-1403 thereof, the *"FNPRM"*), at paras. 1303-1304.

2 *See* Letter from Colleen Boothby, Counsel to Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. at 1 (filed May 19, 2017) ("Ad Hoc Ex Parte").

the uneconomic 8YY originating access charges existing in some areas today. AT&T argues that not only is such behavior uneconomic in itself, it also disincents CLECs that engage in it from transitioning to an IP-based network, since upon such transition they would move to bill-and-keep, which would eliminate the arbitrage opportunity.[3]

Verizon makes the same economic arguments, and goes into more detail on arbitrage behavior, recounting traffic-pumping schemes using autodialers engaged in for the sole purpose of stimulating originating access revenues, not for making meaningful calls.[4] The existence – and even the plausibility – of such practices makes clear the uneconomic nature of the current disparity of treatment. Sprint and GCI, too, endorse the economic reasoning that supports transitioning 8YY originating access to bill-and-keep.[5]

On the other hand, a number of commenters, primarily representing smaller and rural LECs who gain from the current situation, oppose the proposal or propose to delay its implementation until some vague future time. Their arguments take various forms, but they follow a few major themes.

First, and conceptually most trivial, these commenters argue that, because the proposal would move the cost of 8YY originating access to the party in a position to do something about it – the caller's LEC, and, indirectly, the caller – it

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[3] Comments of AT&T, filed herein July 31, 2017 ("AT&T Comments") at 4-8.

[4] Comments of Verizon, filed herein July 31, 2017 ("Verizon Comments") at 2-6.

[5] Comments of Sprint Corporation, filed herein July 31, 2017 ("Sprint Comments") at 1-3; Comments of General Communication, Inc., filed herein July 31, 2017 ("GCI Comments)") at 2-5.

flouts the principle that 8YY calls are “toll-free.”[6] But from the beginning, the term “toll-free” has meant that the caller doesn’t pay *toll* – i.e., long distance – charges, not that the caller’s monthly charge on his or her local bill will never change. However originating access charges are set, the consumer will continue not to pay toll charges for 8YY calls, and converting originating access to bill-and-keep will in no sense violate the consumer understanding of the term.

A similar red herring is the complaint that the change in treatment will cut drastically into the revenues of the originating LEC, with dire consequences for its subscribers. The most sensational version of this is Windstream et al.’s contention that the proposal to recategorize 8YY originating access would be “an un-Constitutional taking, depriving LECs of just compensation for the service provided….”[7] Also complaining of revenue loss are ITTA, CenturyLink, Consolidated et al., Nebraska Rural Independent Companies (“NRIC”) and Inteliquent.[8]

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6 Comments of Windstream Services, LLC, Frontier Communications Corporation and NTCA – The Rural Broadband Association, filed herein July 31, 2017 (“Windstream et al. Comments”) at 10-11; Comments of CenturyLink, filed herein July 31, 2017 (“CenturyLink Comments”) at 4-5; Comments of ITTA – The Voice of America’s Broadband Providers, filed herein July 31, 2017 (“ITTA Comments”) at 3-4; Comments of Teliax, Inc., filed herein July 31, 2017 (“Teliax Comments”) at 7-9; Comments of Inteliquent, Inc., filed herein July 31, 2017 (“Inteliquent Comments”) at 4; Comments of Consolidated Communications Companies, Peerless Network, Inc. and West Telecom Services, LLC, filed herein July 31, 2017 (“Consolidated et al. Comments”) at 10-11. Consolidated et al. further muddy the waters by suggesting that people who call toll-free numbers will now be billed a separate line item for switched access charges, and that this would expose the billing carrier to charges of unauthorized and deceptive billing! Consolidated et al. Comments at 11 n. 32. But this is silly. Carriers don’t bill their subscribers terminating access charges today and 8YY originating access would be treated the same as terminating access.

7 Windstream et al. Comments at 11.

8 ITTA Comments at 4; CenturyLink Comments at 5-6; Consolidated et al. Comments at 9-10; Nebraska Rural Independent Companies, filed herein July 31, 2017 (“NRIC Comments”) at 5-7; Inteliquent Comments at 4-5. NRIC further asserts that applying bill-and-keep to this traffic would give IXCs a “free ride” or a “windfall” (NRIC Comments at 6-7) but the Commission rejected this argument for terminating access in 2011 on grounds that plainly apply to 8YY originating access today.

None of these carriers provides the slightest evidence of the dollar amount of lost revenue, the actual cost to them of providing 8YY originating access, or the hit to their bottom line.[9] The Commission found in its *2011 Transformation Order* issued along with the *FNPRM* that the incremental cost of voice network access was even then approaching zero,[10] that existing network access rates were set in excess of those levels,[11] and that then existing access charge rate levels included "implicit subsidies." [12] All of this is still true for 8YY originating access minutes today.

In the six years since the issuance of the *FNPRM,* these carriers have made no showing of any need to adopt revenue replacement measures designed to offset the move of originating 8YY traffic to bill-and-keep as some commenters now urge.[13] In the unlikely case that a carrier is so atypical that the adoption of

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9 To be sure, a few offer one or two statistical tidbits that reveal nothing about the bottom-line questions of actual costs and revenues. Nor do the data provide any real insight into the overall volume of traffic or revenues that would be affected. For example, Consolidated cites a study it performed (pre-merger with Fairpoint) that concluded that 44% of some unknown portion of its originating traffic came from 8YY calls but doesn't explain how many dollars this amounts to, or how much the cost of providing this access is. Consolidated Comments at 9. ITTA reports a percentage decline in 8YY traffic but similarly does not describe the actual economic impact of this decline. ITTA Comments at 4. *See also* NRIC Comments at 4-5.

10 *2011 Transformation Order* at paras 752 and 753 and accompanying footnotes.

11 *Id.*

12 *2011 Transformation Order* at paras 857 ("Today, carriers receive payments from other carriers for carrying traffic on their networks at rates that are based on recovering the average cost of the network, plus expenses, common costs, overhead, and profits, which together far exceed the incremental costs of carrying such traffic. The excess of the payments over the associated costs constitutes an implicit annual subsidy of local phone networks—a subsidy paid by consumers and businesses everywhere in the country.") and 870 ("Moreover, the Commission has long recognized that intercarrier compensation rates include an implicit subsidy because they are set to recover the cost of the entire local network, rather than the actual incremental cost of terminating or originating another call.").

13 ITTA Comments at 6; CenturyLink Comments at 6.

bill-and-keep for 8YY originating access puts it in real economic jeopardy, it is free to present actual evidence of that hardship to the Commission and seek appropriate relief.

On this last point, consider that, though the recategorization of 8YY originating access has been an express regulatory possibility since 2011, and though Consolidated now raises the alarm that 8YY recategorization would result in a "crippling rate reduction,"[14] Consolidated has routinely paid out the same dividends quarter after quarter during that whole period, regardless of its net income.[15] In 2016, it paid dividends totaling $78.4 million on net income of only $15.2 million.[16] Windstream and CenturyLink too have paid steady and largely unvarying dividends without regard to actual net income.[17] Thus, the cash flow generated by their far-above-cost access revenues has gone to their investors, not to network modernization or consumers. The Commission can safely ignore these carriers' alarmism.

Some of the same commenters who have failed to offer any meaningful data then argue that the Commission must not act because it lacks data!

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14 Consolidated Comments at 4.

15 Consolidated Communications Press Release, "Consolidated Communications Completes FairPoint Acquisition," July 3, 2017, https://www.consolidated.com/about-us/news/article-detail/id/556/consolidated-communications-completes-fairpoint-acquisition.

16 Consolidated Communications 10K for 2016, at pp. 52 and 34, respectively. http://ir.consolidated.com/annuals-proxies.cfm.

17 Windstream Dividend History, http://investor.windstream.com/investors/dividends.cfm; CenturyLink, Inc. Dividend Date & History, http://www.nasdaq.com/symbol/ctl/dividend-history. In 2016, Windstream paid $58.6 million in dividends despite a negative net income for the year of $383.5 million (Windstream 2016 Annual Report at F-41, http://investor.windstream.com/investors/annuals-proxies.cfm), while CenturyLink paid $1.171 billion in dividends on $626 million in net income (CenturyLink 10K for 2016 at p.82, http://ir.centurylink.com/sec-filings).

Windstream, et al., devote the bulk of their comments to the purported need for more data,[18] but not a single data point can be found in their filing. This despite the fact that the Public Notice expressly called on interested parties to refresh the record and supply such data and that they have had every opportunity to submit such data since the *FNPRM* asked parties for input six years ago. This patent stalling tactic should be rejected.

Teliax describes itself in its Comments as a "wholesale 8YY provider" and reports that other CLECs and IP-providers accept delivery of those 8YY calls directly to Teliax for free, whereupon Teliax delivers those 8YY calls and only charges originating access for its services.[19] Teliax fails to disclose that the delivery of 8YY calls over its IP platform at those originating access rates is so lucrative that it *pays* those other CLECs and IP-providers to deliver the service to it – urging them to partner with Teliax to "monetize" origination toll-free traffic.[20] There is no public interest in protecting Teliax's revenues.

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[18] Windstream et al. Comments at 5-10.

[19] Teliax Comments at 4.

[20] Teliax's website boasts:

> "**Toll-Free Compensation:** Teliax is one of the largest 8yy aggregators in the industry. Don't let the IXC's get free service. The FCC is clear, you deserve a fair rate for providing the originating access (8yy orig) functions. Teliax can connect your calls to the IXC and maximize the allowable revenue for the service provided by you, our partner. If you are already monetizing your outbound toll-free we may be able to do better due to our modern routing, direct connections and well established rates. Call today!
> "**8YY Compensation:** Go with a CLEC that pays you back. With Teliax, carriers are entitled to cost recovery for calls to toll-free numbers originated by their customers and carried to the originating providers' networks. Our in-house SIP trunking is specifically designed for billing other LECs for their customers' toll-free numbers. Claimed compensation is carrier priced and based on the volume and funds recovered."

https://www.teliax.com/carrier-services/

CONCLUSION

Supracompetitive, uneconomic 8YY access charges have given certain carriers and other providers a six-year windfall at the expense of consumers. The Commission should remedy this situation without further delay by requiring that 8YY originating access charges be reduced to the same level as terminating access charges.

Respectfully submitted,

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Certificate of Service

I, Sara Crifasi, hereby certify that true and correct copies of the preceding Comments of Ad Hoc Telecommunications Users Committee were filed this 15th day of August, 2017 via the FCC's ECFS system.

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